

**Remarks**

Applicant respectfully requests reconsideration. Claims 1-10, 18-24, 47, 65, 82, 103, 122, 143, 159, 176, 201-214, 216-227, 229, 230-243, 245-257, 259-263, 266, and 268-276 were previously pending in this application. By this amendment, claim 176 is currently amended and previously withdrawn claims 47, 122, 143, 159, and 201 are canceled without prejudice or disclaimer. Applicant reserves the right to pursue any canceled or non-elected claims in continuation and divisional applications. As a result, claims 1-10, 18-24, 65, 82, 103, 176, 202-214, 216-227, 229, 230-243, 245-257, 259-263, 266, and 268-276 are currently pending and under examination with claims 1, 24, 65, 82, 103, 176, and 202 being independent claims. No new matter is introduced.

It has come to Applicant's attention that claim 229, depending from allowed claim 65, has not been included in this Office Action. Applicant believes this was an oversight and respectfully requests that the Examiner include claim 229 as an allowed claim. Allowed claims 216, 245, and 259 have the same immunostimulatory nucleic acid length limitation as claim 229.

Claim 176 is currently amended to add the phrase "IFN-producing cells" in order to clarify the term "IPC". Support for this amendment is found within the description on page 2, lines 3-6 and page 17, lines 20-21. Claim 176 is also currently amended to include the limitation that the "subject" is a "mammalian subject". Support for this amendment is found within the description on page 30, lines 8-10 and page 35, lines 7-12.

*Allowable Subject Matter*

Applicant gratefully acknowledges the Examiner's indication that claims 1-10, 18-24, 65, 82, 103, 202-214, 216-227, 230-243, 245-257, and 259-263 have been allowed. Applicant also gratefully acknowledges the Examiner's withdrawal of the previous rejection under 35 U.S.C. § 102(b) and withdrawal of the previous obviousness-type double patenting rejections.

*Information Disclosure Statement*

Applicant acknowledges that the Examiner has considered the co-pending applications cited in the information disclosure statement submitted on January 26, 2004. The Examiner has pointed out that there was no PTO-1449 submitted. Applicant respectfully confirms that no PTO-1449 form was submitted since only co-pending applications were cited in the information disclosure statement submitted on January 26, 2004.

#### *Claim Objections*

The Examiner indicated that claim 175 is objected to because the term IPC is not spelled out completely and requires appropriate correction. Applicant has reviewed the claims and respectfully points out that claim 175 was previously canceled. Applicant believes this objection may have been intended for claim 176 which recites IPCs. Applicant has therefore currently amended claim 176 to add the phrase "IFN-producing cells", thus clarifying the term "IPCs" as requested by the Examiner. Support for this amendment is found within the description on page 2, lines 3-6 and page 17, lines 20-21.

Accordingly, Applicant respectfully requests the Examiner to withdraw the objection to claim 176.

#### *Rejections Under 35 U.S.C. §112, First Paragraph*

The Examiner indicated that claims 176, 266, and 268-276 are rejected under 35 U.S.C. §112, first paragraph, as not enabling any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims. More specifically, the Examiner asserted that due to the general state of the art and the lack of guidance provided by the application, undue experimentation would be required for a skilled artisan to make and use the method as broadly claimed. The Examiner further asserted the Wands factors but performed the analysis of only the following three Wands factors:

##### a). The breadth of the claims

The Examiner asserted that the claims encompass a method of stimulating production of a plurality of type I interferon subtypes in any subject.

b). The state and the unpredictability of the prior art

The Examiner asserted that there is no evidence in the prior art to suggest that non-mammalian subjects contain any interferon producing cell population that can be stimulated or induced by the immunostimulatory nucleic acids of the present invention.

c). The amount of direction or guidance presented

The Examiner asserted that the specification fails to provide sufficient guidance for a skilled artisan to use the immunostimulatory nucleic acid of claim 176 to stimulate production of a plurality of type I interferon subtypes in any other non-mammalian subject.

Applicant has currently amended claim 176 to add the limitation that a subject is a mammalian subject. Support for this amendment is found within the specification on page 30, lines 8-10 and page 35, lines 7-12. Accordingly, claim 176 as currently amended and subsequent dependent claims 266 and 268-276 are limited to mammalian subjects and the specification provides sufficient guidance for one of ordinary skill in the art to use the immunostimulatory nucleic acids of claim 176 to stimulate production of a plurality of type I interferon subtypes in a mammalian subject.

Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection of claims 176, 266, and 268-276 under 35 U.S.C. §112, first paragraph.

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**Conclusion**

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,  
*Hartmann et al., Applicant*

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